

Senate Bill No. 1970

Passed the Senate August 27, 1998

Secretary of the Senate

Passed the Assembly August 24, 1998

Chief Clerk of the Assembly

This bill was received by the Governor this ____ day
of _____, 1998, at ____ o'clock __M.

Private Secretary of the Governor

└

CHAPTER ____

An act to amend Sections 817 and 1526 of the Penal Code, relating to arrest warrants.

LEGISLATIVE COUNSEL'S DIGEST

SB 1970, Schiff. Arrest warrants: electronic mail.

Existing law requires that a declaration in support of the warrant of probable cause for arrest be a sworn statement made in writing. Existing law also authorizes the magistrate to take an oral statement under oath under specified conditions that provide for the use of facsimile transmission equipment to transmit the proposed warrant, and all supporting declarations and attachments to the magistrate.

This bill would authorize the magistrate to take a written declaration in support of the warrant of probable cause for an arrest via electronic mail under specified conditions.

Existing law authorizes a magistrate, before issuing a warrant, to examine under oath, the person seeking the warrant and any witness that person may produce, and is required to take the affidavit or affidavits of the witness or witnesses in writing. The magistrate is authorized to take the oral statement, using a telephone and facsimile transmission equipment under specified conditions, in lieu of the written affidavit.

This bill would authorize the magistrate under the above provision, to take the oral statement of the person seeking the warrant or any witness that he or she produces, by using the telephone and electronic mail as specified.

The people of the State of California do enact as follows:

SECTION 1. Section 817 of the Penal Code is amended to read:

817. (a) (1) When a declaration of probable cause is made by a peace officer of this state, in accordance with



subdivision (b) or (c), the magistrate, if, and only if, satisfied from the declaration that there exists probable cause that the offense described in the declaration has been committed and that the defendant described therein has committed the offense, shall issue a warrant of probable cause for the arrest of the defendant.

(2) The warrant of probable cause for arrest shall not begin a complaint process pursuant to Section 740 or 813. The warrant of probable cause for arrest shall have the same authority for service as set forth in Section 840 and the same time limitations as that of an arrest warrant issued pursuant to Section 813.

(b) The declaration in support of the warrant of probable cause for arrest shall be a sworn statement made in writing.

(c) In lieu of the written declaration required in subdivision (b), the magistrate may take an oral statement under oath under either of the following conditions:

(1) The oath shall be taken under penalty of perjury and recorded and transcribed. The transcribed statement shall be deemed to be the declaration for the purposes of this section. The recording of the sworn oral statement and the transcribed statement shall be certified by the magistrate receiving it and shall be filed with the clerk of the court. In the alternative, the sworn oral statement may be recorded by a certified court reporter who shall certify the transcript of the statement, after which the magistrate receiving it shall certify the transcript, which shall be filed with the clerk of the court.

(2) The oath is made using telephone and facsimile transmission equipment, or made using telephone and electronic mail, under all of the following conditions:

(A) The oath is made during a telephone conversation with the magistrate, after which the declarant shall sign his or her declaration in support of the warrant of probable cause for arrest. The declarant's signature shall be in the form of a digital signature if electronic mail is used for transmission to the magistrate. The proposed warrant and all supporting declarations and attachments



shall then be transmitted to the magistrate utilizing facsimile transmission equipment or electronic mail.

(B) The magistrate shall confirm with the declarant the receipt of the warrant and the supporting declarations and attachments. The magistrate shall verify that all the pages sent have been received, that all pages are legible, and that the declarant's signature, or digital signature, is acknowledged as genuine.

(C) If the magistrate decides to issue the warrant, he or she shall:

(i) Cause the warrant, supporting declarations, and attachments, to be printed if received by electronic mail.

(ii) Sign the warrant.

(iii) Note on the warrant the exact date and time of the issuance of the warrant.

(iv) Indicate on the warrant that the oath of the declarant was administered orally over the telephone.

The completed warrant, as signed by the magistrate, shall be deemed to be the original warrant.

(D) The magistrate shall transmit via facsimile transmission equipment, or via electronic mail, the signed warrant to the declarant who shall telephonically acknowledge its receipt. The magistrate shall then telephonically authorize the declarant to write the words "duplicate original" on the copy of the completed warrant transmitted to the declarant and this document shall be deemed to be a duplicate original warrant.

(d) Before issuing a warrant, the magistrate may examine under oath the person seeking the warrant and any witness the person may produce, take the written declaration of the person or witness, and cause the person or witness to subscribe the declaration.

(e) A warrant of probable cause for arrest shall contain the information required pursuant to Sections 815 and 815a.

(f) A warrant of probable cause for arrest may be in substantially the following form:



County of _____, State of California.

The people of the State of California to any peace officer of the
STATE:

Proof by declaration under penalty of perjury having been made
this day to me by _____,
(name of affiant)

I find that there is probable cause to believe that the crime(s)
of _____
(designate the crime/s)

has (have) been committed by the defendant named and
described below.

Therefore, you are commanded to arrest
_____ and to bring the defendant
(name of defendant)
before any magistrate in _____ County pursuant to Sections
821, 825, 826, and 848 of the Penal Code.

Defendant is admitted to bail in the amount of ____ dollars
(\$_____).

Time Issued: _____
(Signature of the Judge)
Dated: _____ Judge of the _____ Court

(g) An original warrant of probable cause for arrest or
the duplicate original warrant of probable cause for arrest
shall be sufficient for booking a defendant into custody.

(h) Once the defendant named in the warrant of
probable cause for arrest has been taken into custody, the
agency which obtained the warrant shall file a “certificate
of service” with the clerk of the issuing court. The
certificate of service shall contain all of the following:

- (1) The date and time of service.
- (2) The name of the defendant arrested.
- (3) The location of the arrest.



(4) The location where the defendant was incarcerated.

SEC. 2. Section 1526 of the Penal Code is amended to read:

1526. (a) The magistrate, before issuing the warrant, may examine on oath the person seeking the warrant and any witnesses the person may produce, and shall take his or her affidavit or their affidavits in writing, and cause the affidavit or affidavits to be subscribed by the party or parties making them.

(b) In lieu of the written affidavit required in subdivision (a), the magistrate may take an oral statement under oath under one of the following conditions:

(1) The oath shall be made under penalty of perjury and recorded and transcribed. The transcribed statement shall be deemed to be an affidavit for the purposes of this chapter. In these cases, the recording of the sworn oral statement and the transcribed statement shall be certified by the magistrate receiving it and shall be filed with the clerk of the court. In the alternative in these cases, the sworn oral statement shall be recorded by a certified court reporter and the transcript of the statement shall be certified by the reporter, after which the magistrate receiving it shall certify the transcript which shall be filed with the clerk of the court.

(2) The oath is made using telephone and facsimile transmission equipment, or made using telephone and electronic mail, as follows:

(A) The oath is made during a telephone conversation with the magistrate, whereafter the affiant shall sign his or her affidavit in support of the application for the search warrant. The affiant's signature shall be in the form of a digital signature if electronic mail is used for transmission to the magistrate. The proposed search warrant and all supporting affidavits and attachments shall then be transmitted to the magistrate utilizing facsimile transmission equipment or electronic mail.

(B) The magistrate shall confirm with the affiant the receipt of the search warrant and the supporting



affidavits and attachments. The magistrate shall verify that all the pages sent have been received, that all pages are legible, and that the affiant's signature or digital signature is acknowledged as genuine.

(C) If the magistrate decides to issue the search warrant, he or she shall:

(i) Cause the warrant, supporting affidavit, and attachments to be printed if received by electronic mail.

(ii) Sign the warrant.

(iii) Note on the warrant the exact date and time of the issuance of the warrant.

(iv) Indicate on the warrant that the oath of the affiant was administered orally over the telephone.

The completed search warrant, as signed by the magistrate, shall be deemed to be the original warrant.

(D) The magistrate shall transmit via facsimile transmission equipment, or via electronic mail, the signed search warrant to the affiant who shall telephonically acknowledge its receipt. The Magistrate shall then telephonically authorize the affiant to write the words "duplicate original" on the copy of the completed search warrant transmitted to the affiant and this document shall be deemed to be a duplicate original search warrant. The original warrant and any affidavits or attachments in support thereof, and any duplicate original warrant, shall be returned as provided in Section 1534.



Approved _____, 1998

Governor

